In Re: Wachusett Regional School District
11-6533

Ruling on Motion for Summary Judgment

This matter comes before the BSEA on the appeal of the Wachusett Regional School District (hereinafter “Wachusett”) from the January 24, 2011 determination of the Department of Elementary and Secondary Education (hereinafter “DESE”) that Wachusett has fiscal and programmatic responsibility for Student Q’s special education program 603 CMR 28.10(9). Wachusset asserts that the DESE incorrectly failed to apply the “move-in” law, M.G.L.c. 71B§5, resulting in assignment to it rather than to the Berlin-Boylston Public Schools. Wachusett further asserts that but for Berlin-Boylston’s negligent procedural omissions, fiscal responsibility for Q’s special education program would have remained with Berlin-Boylston for the 2010-2011 school year under the “move-in” law. Both Berlin-Boylston and DESE maintain that the January 24, 2011 LEA assignment to Wachusett is correct. The parties agreed to present their dispute for resolution on Motions for Summary Judgment. All Motions, Opposotions and supporting affidavits were received by May 17, 2011.

A dispute under the IDEA or M.G.L.c. 71B may be resolved by a Motion for Summary Judgment when there is no genuine issue of material fact relating to all or part of a claim and application of relevant law clearly establishes the prevailing party. 801 CMR 1.01 (7)(b). See also: BSEA Rule VII and FRCP 56(c). Here all parties assert, and an independent review of the parties’ submissions confirms, that the predicate facts are not in dispute. Further, the parties agree that interpretation and application of an identified regulation will control the outcome here. Therefore resolution by way of Motions for Summary Judgment is appropriate.

ISSUE

Whether the DESE correctly declined to apply M.G.L.c. 71B§5 (the “move-in” law) in assigning school district responsibility for the Student’s special education program?

FACTS

The undisputed pertinent facts appear in the parties’ written submissions:
1. Student Q is 19 years old and is eligible to receive special education services under M.G.L.c. 71B and 20 U.S.C. § 1401 et. seq.

2. The Student lived with her mother in Boylston, a town within the Berlin-Boylston Regional School District, from at least March 2009 until January 31, 2011. On February 1, 2011, the Student and her mother moved to the town of Jefferson, a member of the Wachusett Regional School District. (Ex. A)

3. In January 2010, Berlin-Boylston entered into a contract with the Seven Hills School Support and Transitional Program to provide special education services to Student Q for the 2009-2010 school year (Ex G). Berlin-Boylston did not apply to DESE for approval of this placement or for sole source funding at Seven Hills for this Student for the 2009-2010 school year.

4. In March of 2010, Berlin-Boylston developed an IEP for the period March 24, 2010 to March 24, 2011 designating the School Support and Transitional Program of Seven Hills as Student Q’s placement. The IEP states:

   The Team has identified a mix of IEP services that are not provided in primarily school-based settings but are in a neutral or community-based setting.

   The IEP Placement page indicates that the proposed placement is a “life skills/transition program.” The Parent accepted the IEP on March 24, 2010 (Ex C; Ex H).

5. The School Support and Transitional Program of Seven Hills is not a DESE approved private day or residential program (Administrative Notice).

6. At some time in the fall of 2010, Berlin-Boylston received information that the City of Worcester, in which Seven Hills is located, had approved Seven Hills as a day school pursuant to M.G.L.c. 76§1. This local approval permitted Berlin-Boylston to apply to the DESE for “sole source” funding of the Student’s IEP services. Berlin-Boylston completed the “Notification of Intent to Seek Approval for Individual Student Program” form on November 4, 2010 (Form 28m/3). It is unclear from this record whether that form was ever submitted to or processed by the DESE. The Parties agree, however, that “sole source” approval for Student Q’s program at Seven Hills has never been obtained from the DESE (Ex F; Ex I).
7. On January 24, 2011 DESE issued an ‘Assignment of School District Responsibility’ concerning Student Q which states:

    student and her mother…have been residing…in Jefferson since 1/18/11. The student attends the Seven Hills School Support and Transition Program, an unapproved setting, since 8/25/09.
    …
    The Student is in an unapproved day program and the student placement is unapproved therefore the move-in law does not apply in this circumstance.

(Ex. B)

The DESE determined that Wachusett Regional School District was both programmatically and fiscally responsible for the Student’s special education program (Ex B).

8. On February 14, 2011 Marie Harrington, the Special Education Administrator for Wachusett Regional School District wrote to Ann Silver of the DESE alerting DESE that Wachusett would be gathering additional information about the Student and would be asking for reconsideration of the DESE assignment (Ex J). There is no indication in the record that Wachusett submitted a Request for Reconsideration, or that DESE actually reconsidered its January 24, 2011 assignment.

9. Wachusett filed a Request for Hearing at the BSEA on March 29, 2011 (Administrative Record).

DISCUSSION

Responsibility for developing, delivering and funding educational programs for all Massachusetts students is based on residence. Recognizing that strict adherence to residence criteria in some situations involving high cost programs for students with significant disabilities could present unanticipated and procedurally unfundable mandates for school districts, the legislature carved out an exception to that general rule. This exception, M.G.L.c. 71B§5, is known as the “move-in law.” The move-in law provides that when a student who attends an “approved” private day or residential school placement moves to a new community after July 1st of any given year, the former school district remains financially responsible for the student’s
private day or residential placement for the balance of the then current fiscal year. ¹ The
definition of an approved private special education school appears in M.G.L.c. 71B’s
implementing regulations at 603 CMR 28.02 (1):

Approved private special education school or approved program
shall mean a private day or residential school, within or outside
Massachusetts, that has applied to, and received approval from, the
Department according to the requirements specified in 603 CMR
28.09.

The question for decision here is whether the “move-in law” applies to the Seven Hills
School Support and Transitional Program. After careful consideration of the thoughtful
arguments of the three parties in interest it is my conclusion that it does not. The pertinent facts
are few: at all relevant times Student Q has attended a transitional special education program
operated by Seven Hills. The transitional program is not a DESE approved private day or
residential school. The DESE has not approved a “sole source” funding arrangement for the
Student to attend the Seven Hills transitional program. The Student moved from the Berlin-
Boylston Regional School District to the Wachusett Regional School district on February 1,
2011. The DESE determined that the move-in law did not apply in this situation and thus transfer
of fiscal responsibility to the Student’s new community of residence within the Wachusett
Regional School District was proper. The DESE cites the fact that the Student’s transitional
special education program was not “approved” by the DESE, either as a private day / residential
school or as a “sole source” as the basis for its assignment of fiscal responsibility to Wachusett.

The DESE’s interpretation of its own regulations should be upheld unless there is a clear
showing of mistake, unreasonableness or inequitable or inconsistent application. Crocker v.
Magaw, 41 F. Supp. 2nd 87 (1999), Mass. Eye and Ear Infirmary v. Commissioner of Revenue,

¹ M.G.L.c. 71B§5 provides, in pertinent part:
[If a child with a disability for whom a school committee currently provides or arranges for the provision of special
education in an approved private day or residential school placement, or his parent or guardian moves to a different
school district on or after July 1 of any fiscal year, such school committee of the former community of residence
shall pay the approved budgeted costs, including necessary transportation costs, of such day or residential placement
for the balance of such fiscal year; …if such move occurs between April 1 and June 30, such school committee of
the former community of residence shall pay such costs for the balance of the fiscal year in which the move
occurred as well as for the subsequent fiscal year. The school committee of the new community of residence shall
assume all responsibilities for reviewing the child’s progress, monitoring the effectiveness of the placement, and
reevaluating the child’s needs from the date of new residence… and… the new community of residence shall be
financially responsible for any increase and the obligation of the school committee of such former community of
residence shall be reduced by any decrease, in the costs of such day or residential placement during such period
which results from any such review, monitoring or reevaluation.
707 N.E.2nd 1088, 46 Mass. App. Ct. 564 (1999). No such showing was made here. Wachusett does not claim that the DESE’s determination of the Student’s residence was mistaken, nor that DESE improperly classified the Seven Hills transitional program as a non-approved private school. There is no showing in this record that DESE misinterpreted or misapplied the residency regulations found at 603 CMR 28.10, or the plain language of M.G.L.c. 71B§5, to the undisputed facts. Therefore there is no basis on which to overturn the DESE’s assignment of fiscal and programmatic responsibility to Wachusett.

Wachusett asserts that the distinction between a transitional program operated by a private school and a DESE “approved” private school is not sufficiently significant to justify the application of the move-in law provisions in one instance but not in the other. While there may be no substantive differences in the special education services provided by the two entities, by including the word “approved” as part of the statutory language the legislature clearly placed them in separate fiscal pools. The DESE points out that there are sound budgetary and oversight reasons for distinguishing between approved and unapproved special education placements when disbursing public funds. Wachusett did not offer a compelling countervailing argument sufficient to defeat DESE’s assertion that the move-in law has a rational basis and that its interpretation and application of M.G.L.c. 71B§5 in these circumstances was consistent with legislative intent. By limiting the reach of the “move-in” law to only those situations that fit unassailably within the plain language of the statute, the DESE’s construction of the statute is strict, but reasonable and supportable.

Wachusett also argues that but for Berlin-Boylston’s failure to actively pursue and secure “sole source” approval and funding from the DESE for the Student’s transitional program, Wachusett would not be financially responsible for the program once the student established residence in Jefferson. This argument is misplaced. One school district has no legal duty to protect an unknown successor school district from any future costs associated with potential resident students with disabilities. Masconomet Regional School District, 13 MSER 363 (2007) Worcester Public Schools, 12 MSER 98 (2006). From the date Student Q became a resident within the Wachusett Regional School District, Wachusett became responsible for ensuring the delivery of a free appropriate public education to her.

---

2 The evidence does support a change in the date of Wachusett responsibility from 1/24/11 to 2/1/11, an inconsistent fact not argued by any party but of which I take notice. See ¶ 2 Supra
3 “Approved” is also the first definition in M.G.L.c. 71B’s implementing regulations. 603 CMR 28.02(1).
ORDER

The Determination of the DESE that the “move-in law” does not apply to special education services which are not delivered as part of an eligible student’s placement in a DESE approved private day or residential school is upheld. The DESE assignment of programmatic and fiscal responsibility for this Student to Wachusett Regional School District is modified consistent with this record to reflect a move-in date of February 1, 2011.

The Motion of the Wachusett Regional School District for Summary Judgment in its favor is DENIED.

The Motions of the DESE and the Berlin-Boylston School District for Summary Judgment in their respective favors are GRANTED.

July 7, 2011

Lindsay Byrne, Hearing Officer